

IN THE WATER COURT OF THE STATE OF MONTANA  
CLARK FORK DIVISION  
KOOTENAI RIVER BASIN (76D)  
PRELIMINARY DECREE

\* \* \* \* \*

CLAIMANT: Quirk Cattle Co.

OBJECTORS: Quirk Cattle Co.; United States of America  
(USDA Forest Service)

**CASE 76D-0032-R-2022**  
76D 30127060

**NOTICE OF FILING OF MASTER'S REPORT**

This Master's Report was filed with the Montana Water Court on the above stamped date. Please review this report carefully.

You may file a written objection to this Master's Report within **10 days** of the stamped date if you disagree or find errors with the Master's findings of fact, conclusions of law, or recommendations. Rule 23, W.R.Adj.R. If the Master's Report was mailed to you, the Montana Rules of Civil Procedure allow an additional 3 days to be added to the 10-day objection period. Rule 6(d), M.R.Civ.P. If you file an objection, you must serve a copy of the objection to all parties on the service list found at the end of the Master's Report. The original objection and a certificate of mailing to all parties on the service list must be filed with the Water Court.

If you do not file a timely objection, the Water Court will conclude that you agree with the content of this Master's Report.

**MASTER'S REPORT**

Water Right Claim 76D 30127060 appeared in the Preliminary Decree for the Kootenai River Basin (Basin 76D) issued May 6, 2021. This claim received an issue remark. Issue remarks result from Department of Natural Resources and Conservation



(“DNRC”) claims examination or by Water Court order. Claims examination confirms the historical use of water right claims and identifies issues with claims. If claims examination cannot confirm some aspect of a claim, an issue remark is added to the claim. This claim also received an objection filed by the United States of America (USDA Forest Service).

The Court consolidated this claim into Water Court Case 76D-0032-R-2022 on October 25, 2022. The consolidation order set a settlement deadline by which the parties were to file settlement documents or status reports. After an extension of time, the parties filed a stipulation to resolve the objection.

### **FINDINGS OF FACT**

1. Claim 76D 30127060 appeared with the following issue remark:  
CLAIM NUMBER WAS NOT INCLUDED IN THE BASIN 76D DECREE  
ISSUED 3/22/1984.
2. The United States objected to the point of diversion and place of use of this claim.
3. The stipulation is signed by representatives of both parties. The stipulation includes a marked-up abstract and a map as supporting evidence.
4. The stipulation states the parties agree to the following:
  1. Both the place of diversion and place of use for claim 76D 30127060 should be amended to SWSESE, Section 30, Township 37N, Range **26W**, Lincoln County.
5. The map included with the stipulation as Exhibit 2 indicates the claimed source, Indian Creek, is located in Range 26 West, not Range 27 West.
6. The point of diversion and place of use should be described as SWSESE of Section 30, T37N, R26W.
7. The issue remark should be removed.

### **APPLICABLE LAW**

1. A properly filed statement of claim is prima facie proof of its content. Section 85-2-227, MCA. The prima facie status of a claim may be overcome by a preponderance of the evidence. Section 85-2-227, MCA; Rule 19, W.R.Adj.R. A



preponderance of the evidence is evidence that shows a fact is “more probable than not.” *Hohenlohe v. State*, 2010 MT 203, ¶ 33, 357 Mont. 438, 240 P.3d 628.

2. The Water Court must weigh an issue remark, and the information resulting in that issue remark, against the claimed water right. Section 85-2-247(2), MCA.

3. The Water Court must resolve all issue remarks not resolved through the objection process. Section 85-2-248, MCA. The Court must review information in the claim file or obtained by the Court to determine if there is a sufficient basis to resolve the remarks. 85-2-248(3), MCA.

4. The Water Court has the authority to hear all objections to the elements of any claim included in a Court issued Temporary Preliminary Decree or Preliminary Decree. Section 85-2-233, MCA.

### **CONCLUSIONS OF LAW**

1. The changes described in the Findings of Fact may be made because the evidence in the record overcomes the prima facie status of the claim by a preponderance of the evidence.

2. The evidence in the record and the proposed changes provide the Court with a sufficient basis to resolve and remove the issue remark from the above-captioned claim.

### **RECOMMENDATIONS**

Based upon the above Findings of Fact and Conclusions of Law, this Master recommends that the Court make the changes specified in the Findings of Fact to correct the Preliminary Decree for this Basin. A post-decree abstract of Water Right Claim is served with this Report to confirm the recommended changes have been made in the state’s centralized record system.

**ELECTRONICALLY SIGNED AND DATED BELOW.**



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**Service Via Electronic Mail:**

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**POST DECREE  
ABSTRACT OF WATER RIGHT CLAIM  
KOOTENAI RIVER  
BASIN 76D**

**Water Right Number:** 76D 30127060 STATEMENT OF CLAIM

**Version:** 2 -- POST DECREE

**Status:** ACTIVE

**Owners:** QUIRK CATTLE CO  
1151 BURMA RD  
EUREKA, MT 59917

**Priority Date:** OCTOBER 15, 1884

**Type of Historical Right:** USE

**Purpose (use):** STOCK

**Flow Rate:** A SPECIFIC FLOW RATE HAS NOT BEEN DECREED BECAUSE THIS USE CONSISTS OF STOCK DRINKING DIRECTLY FROM THE SOURCE, OR FROM A DITCH SYSTEM. THE FLOW RATE IS LIMITED TO THE MINIMUM AMOUNT HISTORICALLY NECESSARY TO SUSTAIN THIS PURPOSE.

**Volume:** THIS RIGHT INCLUDES THE AMOUNT OF WATER CONSUMPTIVELY USED FOR STOCK WATERING PURPOSES AT THE RATE OF 30 GALLONS PER DAY PER ANIMAL UNIT. ANIMAL UNITS SHALL BE BASED ON REASONABLE CARRYING CAPACITY AND HISTORICAL USE OF THE AREA SERVICED BY THIS WATER SOURCE.

**Source Name:** UNNAMED TRIBUTARY OF INDIAN CREEK

**Source Type:** SURFACE WATER  
ALSO KNOWN AS ALDER SPRING

**Point of Diversion and Means of Diversion:**

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		SWSESE	30	37N	26W	LINCOLN

**Period of Diversion:** JANUARY 1 TO DECEMBER 31

**Diversion Means:** LIVESTOCK DIRECT FROM SOURCE

**Period of Use:** JANUARY 1 TO DECEMBER 31

**Place of Use:**

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1			SWSESE	30	37N	26W	LINCOLN



TODD KIM, Assistant Attorney General  
Environment & Natural Resources Division

ELECTRONICALLY FILED

JESSE LASLOVICH, United States Attorney  
District of Montana

76D-0032-R-2022

January 9, 2023

MARK J. WIDERSCHNEIN, Trial Attorney  
United States Department of Justice  
Environment & Natural Resources Division  
Natural Resources Section  
P.O. Box 7611  
Washington, D.C. 20044-7611  
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Montana Water Court

ATTORNEYS FOR UNITED STATES OF AMERICA,  
Department of Agriculture – Forest Service

**IN THE WATER COURT OF THE STATE OF MONTANA  
CLARK FORK DIVISION  
KOOTENAI RIVER BASIN – BASIN 76D  
PRELIMINARY DECREE**

\*\*\*\*\*

CLAIMANT: Quirk Cattle Co.

**CASE 76D-0032-R-2022**  
76D 30127060

OBJECTOR: Quirk Cattle Co.; United States of America (USDA  
Forest Service)

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**STIPULATION TO RESOLVE OBJECTIONS**

This Stipulation, entered into by the United States of America, Department of Agriculture – Forest Service (the “United States”), and Claimant / Objector Quirk Cattle Co. (“Quirk”), is for the purpose of resolving the United States’ objections to Water Right Claim No. 76D 30127060 (the “Claim”).

**RECITALS**

A. Pursuant to Mont. Code Ann. § 85-2-221, Claimant, or a predecessor-in-interest to Claimant, timely filed a Statement of Claim for the Claim with the Department of Natural Resources and Conservation.



B. Pursuant to Mont. Code Ann. § 85-2-233, the United States timely filed a Notice of Objection to the Claim as it appeared on the Preliminary Decree for Basin 76D.

C. The Claim asserts a use right on an Unnamed Tributary of Indian Creek for stock watering directly from the source. The range number in the point of diversion and place of use shown on the Preliminary Decree is incorrect.

D. In the interest of resolving this case without the need for further litigation, Claimant and the United States stipulate to the modifications below.

### **STIPULATION**

1. Both the place of diversion and place of use for claim 76D 30127060 should be amended to SWSESE, Section 30, Township 37N, Range **26W**, Lincoln County.

2. The proposed abstract, attached as **Exhibit 1**, and the map, attached as **Exhibit 2** to this Stipulation accurately reflect the modifications stipulated above.

3. Upon entry of a ruling and final order in this case reflecting the amendments specified above for claim 76D 30127060, the United States' objections to claim 76D 30127060 shall be deemed resolved, provided that such order(s) do not expand or change other substantive elements of the claim.

4. This Stipulation is the compromise of disputed water claims and is not to be construed as an admission against the interests of any party.

5. The terms of this Stipulation are binding on the parties, their successors, and assignees. Nothing in this Stipulation shall create any right, claim, cause of action, objection, defense, or other remedy in any person not a party to the Stipulation.



6. Each party will bear its own costs and attorney fees arising from the negotiation and execution of the Stipulation and in proceedings before the Montana Water Court regarding this case.

7. Each undersigned party entered into and executed this Stipulation voluntarily, in good faith, and without any fraud, misunderstanding, misrepresentation, overreaching, duress, or undue influence, whatsoever.

8. The parties hereto represent and affirm that the signatories to this Stipulation are legally authorized to bind the party to this matter.

9. This Stipulation may be executed by the parties in counterparts, each of which when executed and filed with the Montana Water Court shall be an original, but all of which together shall constitute one instrument.

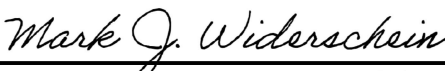
10. This document (§§ 1-10) embodies the entire Stipulation of the parties.

IT IS SO STIPULATED on the date last entered below:

TODD KIM, Assistant Attorney General  
Environment & Natural Resources Division

JESSE LASLOVICH, United States Attorney  
District of Montana

Dated: January 9, 2023

  
MARK J. WIDERSCHIN, Trial Attorney  
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United States Department of Justice  
Environment & Natural Resources Division  
Natural Resources Section  
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Electronic Service: [MontanaBasins.ENRD@usdoj.gov](mailto:MontanaBasins.ENRD@usdoj.gov)

ATTORNEYS FOR UNITED STATES OF AMERICA,  
Department of Agriculture – Forest Service



Dated: January 9, 2023

/S/ Scott D. Hagel

Scott D. Hagel  
Crowley Fleck PLLP  
PO Box 759  
Kalispell, MT 59903

*Counsel for Quirk Cattle Co.*



# **EXHIBIT 1**



**PROPOSED ABSTRACT**

**PRELIMINARY DECREE  
KOOTENAI RIVER  
BASIN 76D  
ABSTRACT OF WATER RIGHT CLAIM**

**IMPORTANT NOTICE**

**YOUR WATER RIGHT AS SHOWN ON THIS ABSTRACT MAY HAVE CHANGES FROM YOUR WATER RIGHT AS CLAIMED OR AMENDED. AN ASTERISK (\*) HAS BEEN PLACED NEXT TO EACH ITEM CHANGED BY THE MONTANA WATER COURT OR BY THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION (DNRC) DURING THE PREPARATION OF THIS PRELIMINARY DECREE. THESE CHANGES ARE AUTHORIZED BY THE MONTANA SUPREME COURT WATER RIGHT CLAIMS EXAMINATION RULES OR BY ORDER OF THE WATER COURT.**

**OBJECTIONS MAY BE FILED ACCORDING TO THE PROCEDURES OUTLINED IN THE DOCUMENT ENTITLED "NOTICE OF ENTRY OF PRELIMINARY DECREE AND NOTICE OF AVAILABILITY."**

**Water Right Number:** 76D 30127060 STATEMENT OF CLAIM

**Version:** 1 -- ORIGINAL RIGHT

**Status:** ACTIVE

**Owners:** QUIRK CATTLE CO  
1151 BURMARD  
EUREKA, MT 59917

**Priority Date:** OCTOBER 15, 1884

**Type of Historical Right:** USE

**Purpose(use):** STOCK

**\*Flow Rate:** A SPECIFIC FLOW RATE HAS NOT BEEN DECREED BECAUSE THIS USE CONSISTS OF STOCK DRINKING DIRECTLY FROM THE SOURCE, OR FROM A DITCH SYSTEM. THE FLOW RATE IS LIMITED TO THE MINIMUM AMOUNT HISTORICALLY NECESSARY TO SUSTAIN THIS PURPOSE.

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<u>ID</u>	<u>Govt Lot</u>	<u>Qtr</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		SW	SESE	30	37N <del>26</del> 27W	LINCOLN

**Period of Diversion:** JANUARY 1 TO DECEMBER 31

**Diversion Means:** LIVESTOCK DIRECT FROM SOURCE

**Period of Use:** JANUARY 1 TO DECEMBER 31



**\*Place of Use:**

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1			SWSESE	30	37N	26 <del>27</del> W	LINCOLN

**Remarks:**

THE FOLLOWING ISSUES WERE IDENTIFIED BY THE DNRC DURING ITS EXAMINATION OF THIS WATER RIGHT CLAIM.

THIS CLAIM NUMBER WAS NOT INCLUDED IN THE BASIN 76D DECREE ISSUED 3/22/1984.

A BETTER UNDERSTANDING OF YOUR CLAIMED WATER RIGHT CAN BE OBTAINED BY COMPARING YOUR RIGHT WITH OTHER CLAIMS IN THE BASIN. FOR EXAMPLE, COMPARE PRIORITY DATES, FLOW RATES, VOLUMES, OR ACRES IRRIGATED. ALSO, YOUR WATER RIGHT MAY BE SUBJECT TO WATER RIGHTS IN ADJOINING SUBBASINS OR BASINS AS WELL AS BEING SUBJECT TO OTHER RIGHTS ON YOUR SOURCE OF SUPPLY. FINALLY, YOUR WATER RIGHT MAY BE SUBJECT TO INDIAN RESERVED AND FEDERAL RESERVED WATER RIGHTS.

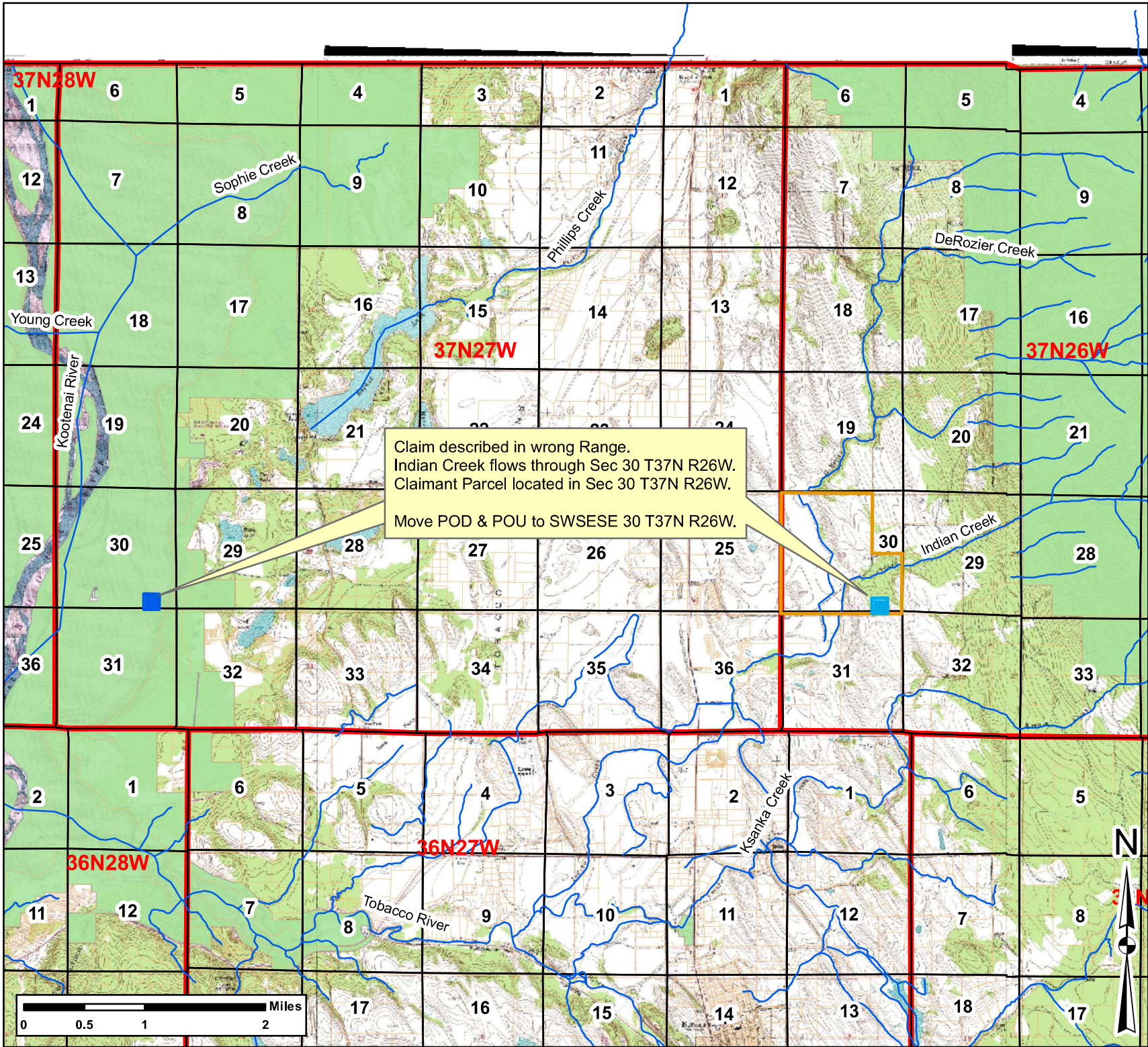
COMPLETE DETAILS REGARDING THE DNRC PREPARATION OF THIS PRELIMINARY DECREE AND RELATED MATERIALS CAN BE REVIEWED AT THE OFFICE LOCATIONS IDENTIFIED IN THE DOCUMENT ENTITLED "NOTICE OF ENTRY OF PRELIMINARY DECREE AND NOTICE OF AVAILABILITY."

SEE GENERAL FINDINGS OF FACT AND CONCLUSIONS OF LAW FOR FURTHER EXPLANATION OF YOUR CLAIMED WATER RIGHT. THESE FINDINGS CAN BE FOUND AS INDICATED IN THE DOCUMENT ENTITLED "NOTICE OF ENTRY OF PRELIMINARY DECREE AND NOTICE OF AVAILABILITY." IF YOU NEED OBJECTION FORMS, OR HAVE QUESTIONS ABOUT WATER COURT PROCEDURES OR CHANGES TO YOUR RIGHT, YOU CAN CONTACT THE WATER COURT BY CALLING 1-800-624-3270 (WITHIN MONTANA ONLY) OR 1-406-586-4364, OR BY WRITING TO P.O. BOX 1389, BOZEMAN, MT 59771-1389.



# **EXHIBIT 2**





**BASIN 76D**

301267060

POD/POU  
SWSESE 30  
T37N R27W

USGS Topo 2011

**Legend**

- POD\_76D
- POU\_76D
- NHD Flowline
- Township
- Parcels
- OWNERCLASSIFICATION**
- USDA FOREST SERVICE

1:67,610

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**Brianna Niehoff**

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Montana Rules of Evidence 408



## CERTIFICATE OF SERVICE

I hereby certify that on January 9, 2023, I sent a true and correct copy of the foregoing document to the following:

**Service via USPS Mail:**

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PO Box 759  
Kalispell, MT 59903  
(406) 752-6644

**/s/ Melissa Saale**

Melissa Saale, Law Clerk